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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE 245th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 April 1996, at 10 a.m.

Temporary Chairman: Mrs. KLEIN (Representative of the Secretary-General)

Chairman: Mr. DIPANDA MOUELLE

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SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

The meeting was called to order at 10.10 a.m.

OPENING OF THE SESSION BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL; adoption of the provisional agenda

1. The TEMPORARY CHAIRMAN declared open the fifteenth session of the Committee and welcomed the members who had been elected or re-elected at the Fifth Meeting of the States parties to the Convention.

SOLEMN DECLARATION BY THE NEWLY ELECTED MEMBERS OF THE COMMITTEE (item 2 of the provisional agenda)

2. The TEMPORARY CHAIRMAN invited the five members of the Committee who had been elected or re-elected at the Fifth Meeting of the States parties to the Convention to make the solemn declaration set out in rule 15 of the Committee's rules of procedure (CAT/C/3/Rev.1).

3. Mr. Burns, Mr. Camara, Mr. González Poblete, Mr. Pikis and Mr. Yupanqui solemnly declared that they would perform their duties and exercise their powers as members of the Committee against Torture honourably, faithfully, impartially and conscientiously.

ELECTION OF THE OFFICERS OF THE COMMITTEE (item 3 of the provisional agenda)

4. Mr. BURNS announced that, at an informal meeting held earlier, the Committee had elected by acclamation Mr. Dipanda Mouelle as Chairman of the Committee, Mr. Sørensen, Mr. Yakovlev and Mr. González Poblete as Vice-Chairmen, and Mrs. Iliopoulos-Strangas as Rapporteur.

5. Mr. Dipanda Mouelle took the Chair.

ADOPTION OF THE AGENDA (item 4 of the provisional agenda) (CAT/C/35)

6. Mr. BRUNI (Secretary of the Committee) said that, in the context of the reorganization of its work, the General Assembly had decided that it would consider certain items only every two years, including the annual reports submitted by the Committee in accordance with article 24 of the Convention. Since that report (A/50/44) would therefore be considered at the fifty-first session of the General Assembly, item 10 of the provisional agenda should be amended as follows: subparagraph (a) ("Annual report submitted by the Committee under article 24 of the Convention") should be deleted and subparagraph (b) ("Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights") should become the heading of item 10.

7. The provisional agenda (CAT/C/35), as orally amended, was adopted.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of Armenia (CAT/C/24/Add.4/Rev.1)

8. At the invitation of the Chairman, Ms. Soudjian and Mr. Nazarian (Armenia) took places at the Committee table.

9. Ms. SOUDJIAN (Armenia) stressed that Armenia was submitting a report as an independent State for the first time. In doing so, the Armenian authorities wished not only to fulfil their obligations under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but also to demonstrate their resolve to implement the fundamental instruments adopted by the United Nations, among them the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Vienna Declaration and Programme of Action. The Convention was an important document, in the light of which the functioning of human rights mechanisms could be examined at the legislative, executive and judicial levels.

10. The Constitution of the Republic of Armenia, adopted on 5 July 1995, guaranteed the protection of fundamental human rights and established Armenia as a democratic country subject to the rule of law. Other laws had been adopted in the area of human rights, among them the law on refugees, the law on victims of repression, and the law on freedom of conscience and religious organizations. The absence, however, of the conditions necessary for the establishment of a new relationship between the State and its citizens made the implementation of those laws difficult. In that regard, the Armenian delegation hoped that its dialogue with the Committee would provide not only an analysis of the current situation in that country but also guidance for the future, with particular emphasis on humanizing the penitentiary system in accordance with the Standard Minimum Rules for the Treatment of Prisoners.

11. The Universal Declaration of Human Rights commenced with the recognition of the inherent dignity of all members of the human family, and it was that principle which should motivate the re-establishment of a democratic society. Unfortunately, Armenia was not yet entirely free from Soviet traditions and ideology, especially in the area of criminal justice. Another obstacle was the dire economic conditions, which affected in particular such vulnerable population groups as women, children, refugees and prisoners.

12. On 20 November 1995 a law had been passed establishing a constitutional court whose chief task was to ensure the implementation of the principles of the Constitution. It was legislation and the enforcement of that legislation by fair judicial bodies which fundamentally guaranteed the protection of human rights and fundamental freedoms. Since complementary structures were sometimes necessary as well, the Armenian authorities had opened a Centre for Democracy and Human Rights, to provide education and information in those areas. The creation of a training programme for law enforcement officials was another means of preventing breaches of human rights. In that regard, she drew the Committee's attention to the planned cooperation between the Centre for Human Rights and Armenia. The Armenian Government had, moreover, recently signed an agreement with the International Committee of the Red Cross,

to re-establishing democracy and the rule of law in Armenia.

13. Mr. SORENSEN (Country rapporteur) said that the constitutional reform of the internal problems being experienced by some of the States [illegible] fighting in neighbouring countries. Armenia was going through a transition period and the Committee hoped that it would soon be able to [illegible] bolster its fledgling legislation in the area of human rights.

14. The Committee was pleased to note that the new Constitution expressly prohibited torture. Article 2, paragraph 2 of the Convention nevertheless stipulated that States parties should take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. Such torture must first of all be defined as an offence in domestic law. Paragraph 8 of the report indicated that the ratification of the Convention obliged Armenia to incorporate the provisions of the Convention in its domestic law. Had such measures been envisaged or did the Convention automatically take precedence over national legislation?

15. Recalling that under the terms of article 2, paragraph 2, of the Convention, no exceptional circumstances could be invoked as a justification for torture, he inquired whether the various provisions guaranteeing protection for human rights in Armenia could be suspended, and if so, by what authority, under what circumstances, and for how long. Article 2 [illegible] could not be invoked to justify torture. Had any such provision been envisaged in Armenian criminal legislation?

16. It would be useful to know whether, in particularly grave cases of [illegible] the death penalty, the State Party was liable to a [illegible] eight years of imprisonment, as paragraph 21 of the report suggested. The Armenian delegation should specify whether paragraph 17 was correct in that pre-trial detention must not involve any form of punishment, indicating what time spent in pre-trial detention could not be deducted from the eventual sentence.

17. The principal aim of article 3 of the Convention was to prevent the return of any and all persons to countries where they stood the risk of being subjected to torture, now that they were asylum seekers or even nationals. The Committee set the Convention, which had universal scope, above bilateral agreements: it would be useful to know the relevant provisions of Armenian law, in particular, who took the decision to expel an individual - especially in the case of an asylum seeker - and if such a decision could be appealed before a court. Armenia should describe that entire process fully, with regard to both law and practice, especially since, according to information submitted by non-governmental organizations, Armenia had returned certain persons to countries where conditions were unfavourable.

18. With regard to articles 4 to 8 of the Convention, it was important to know what measures Armenia had taken to penalize the crime of torture and to ensure universal jurisdiction, or, in other words, how it punished acts of

torture whether or not committed on its territory. That was an obligation since one of the fundamental aims of the Convention was to make outlaws of torturers.

19. Eliminating the scourge of torture called for education and training, as provided under article 10 of the Convention. Paragraph 45 of the report stated that the Armenian Government was planning to pursue a policy of integrating human rights into the teaching and training of some members of the judiciary and the security personnel. Regular police, prison guards and members of the border patrol should also be educated in the prohibition against torture, and in specific aspects of that prohibition, as should public prosecutors and judges. Health personnel were another target group, since, unfortunately, certain doctors were implicated in cases of torture, and at all stages.

20. With regard to article 11, paragraph 47 of the report indicated that police custody could not exceed 72 hours, but could under certain circumstances be extended to 30 days. The members of the Committee were well aware that abuses generally took place not in places of detention, but in police stations; the risk of abuse therefore increased with the length of the custody. While a period of 72 hours might be acceptable as a strict maximum, a period of 30 days was excessive. It would be interesting to know whether there were special guidelines governing the circumstances under which custody could be extended to 30 days, who took such a decision, whether remedies were available, and how the procedure functioned in practice. There were four essential safeguards against abuses in police stations: the right to consult a lawyer, the right to inform a second or third party, the right to be examined by an independent physician, and the right to be informed of one's rights in a language one understood. It would be useful to have details of the provisions of the current Penal Code concerning those four safeguards and to know whether all the rights of an individual apprehended by the police were respected. That question took on special importance because Armenia was in the process of adopting new laws, and could well benefit from the views of the members of the Committee against Torture in that regard. For the protection of the rights of persons under arrest, two other important elements should obtain: first, a code of conduct for members of the police and guidelines regarding interrogations, and second, the establishment of a police log where every action and occurrence during the period of custody would be recorded.

21. In the matter of articles 12 and 13 of the Convention, Armenia should specify in particular whether investigations were conducted by a totally independent body in cases where there was reason to believe that an act of torture had been committed on its territory.

22. He stressed the great importance of article 14, which guaranteed redress, compensation, and rehabilitation to all victims of torture. With regard to the right to redress, he noted with satisfaction that the State had taken a great step forward by acknowledging errors it had committed in the past. With regard to compensation, it would be useful to know how the procedure functioned: whether it was exclusively the responsibility of the person tortured to bring an action or whether, in the event that, under the terms of the Convention, a complaint was lodged against a member of the police, proceedings were automatically instituted with a view to providing

compensation to the victim. Torture victims were in fact rarely in a position to bring an action before the courts. Rehabilitation should be provided to all victims of torture, affording them the chance to live a decent life; the establishment of a rehabilitation centre in Armenia was therefore auspicious.

23. In addition to country reports, the Committee also received information from other sources. Amnesty International had transmitted information containing reports that detained persons had been mistreated and beaten. The State party should supply, where available, statistical information concerning the number of cases of that kind, and, for example, the number of police who had been investigated for such acts. The report of Amnesty International also indicated that victims of torture were reluctant to lodge complaints for fear of reprisals, and that incarcerated persons were barred from all contact with members of their family, making it impossible for them to institute an action. The report of Amnesty International drew particular attention to an incident that had occurred on 19 June 1995. After a raid by masked men on the offices of a charity organization of former officials of the Ministry of the Interior, in the centre of Erevan 14 persons had been arrested, among them 11 retired officials who were members of the organization; during their detention, they were mistreated. Amnesty International also pointed out that the extreme difficulty of bringing an action contravened the terms of the Convention, which provided that, when a complaint of mistreatment was lodged, the State party must immediately have an investigation carried out by an impartial body so as to bring the culprits quickly before the courts. The Committee awaited with interest any clarifications the delegation could supply in response to that information.

24. The CHAIRMAN noted that the country rapporteur had made an exhaustive study of the report of Armenia. While associating himself with the questions raised, he would like further clarifications with regard to several points. First and foremost, he welcomed the creation of a Centre for Human Rights in Armenia, a country in transition whose difficulties were known to all. The report made various references to a draft penal code, and it would be useful to know if that text had been adopted, or when it would be. Although the report indicated that Armenia had not yet incorporated a definition of torture, within the meaning of the Convention, in its domestic law, it also indicated, on a number of occasions, that acts of torture were punishable. The question arose how those acts were punished, when under the principles of law, without a crime there could be no punishment. The Armenian authorities should review the matter of the criminal clarification of acts of torture, so as to comply with article 1 of the Convention.

25. Clarifications on the status of the judiciary, and in particular on how its independence was ensured and how judges were appointed or dismissed would also be of interest.

26. He then inquired whether solitary confinement existed in Armenia, and, if so, by what provisions it was regulated and what role the judge played in monitoring it.

27. With regard to article 5 of the Convention, the Committee placed great emphasis on the notion of universal jurisdiction, under which all torturers

should be punished whatever their whereabouts. Such persons must be extradited or tried, and provisions should be enacted to that effect.

28. Mr. BURNS inquired whether there existed in Armenia a provision resembling habeas corpus, under which all persons who believed they had been unjustly detained had the right to apply directly to a court to rule on the lawfulness of the detention.

29. It was known that Armenia was facing a difficult situation at its borders, and in economic terms; in the circumstances, it should be commended for the numerous measures it had taken to ensure the protection of human rights. A number of questions nevertheless arose; it would be particularly interesting to know whether the army or the security forces had powers of arrest and detention which overrode usual procedures and, if so, to have details with regard to the nature of those powers.

30. Clarification would be useful on paragraph 20 of the report, in which the term "extradition" was not used in the accepted sense, perhaps because of a translation error.

31. A number of questions arose with regard to refugees. Upheavals in the region had obliged many minorities to migrate, and Armenia, like other countries in the region, faced a refugee problem. The Armenian Government should be commended for introducing legislation giving official recognition to the Convention relating to the Status of Refugees, but it would be useful to know what practical measures it had taken to ensure the effective implementation of that legislation, and in particular whether a national law or administrative guidelines had been adopted for that purpose. Further questions concerning refugees which had been raised publicly, were the forced recruitment of refugees and foreign nationals into the Armenian army. Information was needed on the legal grounds on which the armed forces recruited foreign nationals and on whether the Armenian Government enacted provisions to prohibit involuntary recruitment.

32. Since the country rapporteur, he wished to know the current situation regarding access to a lawyer at the time of arrest. Regarding the information supplied by Amnesty International, he asked for further details on the ill-treatment of detained persons, and in particular that of the three persons who had reportedly retracted their statements on the grounds that they had been extracted by force by members of the police. Detailed information should also be provided on the ill-treatment to which religious minorities in Armenia were said to be subjected. Lastly, clarification should be provided on reported ill-treatment of members of the charity organization of former public officials.

33. Mrs. ILIOPOULOS-STRANGAS associated herself with the questions asked by other members of the Committee, and said that she had only two additional matters to raise. Firstly, with regard to paragraph 5 of the report, she would like to know more about the process by which the Convention was being incorporated in national legislation, as well as the reason for the delay in finalizing its incorporation, since the Convention had entered into force in Armenia in September 1993.

34. Secondly, with regard to article 3 of the Convention, paragraph 16 of the report stated that Armenian legislation contained no provisions on extradition. Did there exist, for example, a draft law regarding the expulsion and return of foreigners to countries where they stood the risk of being tortured? The constitutions of modern States generally prohibited extradition that was politically motivated, for example.

35. Mr. REGMI commended Armenia for the efforts it had made since independence to establish a democratic regime. Although the Constitution of July 1995 indeed embodied respect for human rights, the Convention against Torture was not yet fully effective in Armenia, which was still in a transition phase. The draft penal code and the draft code of penal procedure, along with other texts in preparation, should profoundly modify the practice of the entire judicial system, and the State party had declared its willingness to incorporate the Convention in its domestic law. The report nevertheless gave no indication of how the Convention was applied in practice or of what measures had actually been taken to combat torture.

36. Paragraph 8 of the report stated that the Supreme Court had adopted a declaration guaranteeing the rights of defence of suspects and accused persons, but made no mention of detainees. Were they permitted to consult a lawyer, to be examined by a doctor of their choice and to contact their families? Were they apprised of the reasons for their detention?

37. The new Constitution expressly forbade torture and other cruel or degrading treatment, a good point of departure; the definition of torture contained in article 1 of the Convention should, however, be incorporated in Armenian law, which should furthermore stipulate that any act of torture and any complicity in such acts were punishable and would give rise to compensation. Armenia was obliged to ensure that every allegation of torture was thoroughly investigated and the results made public, and that those who committed acts of torture were brought to justice.

38. The Committee had received numerous reports from various sources, including Amnesty International, which attested to the ill-treatment of detained persons and stated that persons awaiting trial were barred from all contact with their families and that many presumed victims had admitted to fearing reprisals if they filed a complaint. It had even been reported that detained persons had been mistreated in the offices of the Department of State for National Security. Could the Armenian delegation provide clarifications on those cases?

39. The interesting initial report of Armenia attested to the willingness of that country to ensure respect for human rights.

40. Mr. CAMARA, associating himself with earlier questions said that clarification would be useful concerning paragraph 5 of the report, which stated that citizens could invoke the provisions of the Convention before the courts and administrative bodies. That universal principle having been established, it would be useful to know how it was implemented in practice and by what means an individual could invoke an international instrument before the courts. Had such cases arisen and, if so, what decisions had been rendered?

41. Mr. GONZALEZ POBLETE welcomed the opportunity to consider the report of a country in transition. It was the intention of the Committee to offer not criticisms, but recommendations regarding the gaps that needed filling in that initial phase.

42. The aim of articles 5, 6, 7 and 8 of the Convention was to establish effective international cooperation to ensure that torturers could find no shelter from the law anywhere in the world, and were prosecuted regardless of their whereabouts. The report failed, however, to explain clearly in what way Armenian legislation ensured that prosecutions would be instituted across national borders. The Code of Penal Procedure contained no provisions concerning extradition, since such procedures were governed by bilateral treaties. In his view, national legislation must expressly stipulate that torture, like other serious breaches of international humanitarian law, were extraditable offences, whether or not there existed a bilateral extradition treaty between the parties concerned. Additional information would be useful concerning the possibilities for international prosecution under Armenian law.

43. Mr. ZUPANCIC, recalling that Armenia was at a delicate stage in the transition to a more democratic system stressed that, generally speaking, acts of torture were committed in the context of the judicial process, during the preliminary investigation conducted by the police. Preferring to formulate Mr. Burns' question concerning habeas corpus in a manner that was both more precise and better adapted to the Armenian legal system, he inquired whether the Constitutional Court was empowered to hear individual complaints of human rights violations that contravened the Constitution, or whether it dealt solely with theoretical issues. In other words, could the Constitutional Court hear specific cases and could detained persons awaiting trial apply to it? In cases of that kind, many constitutional courts required the exhaustion of all other remedies. Certain eastern European constitutional courts would not hear such complaints until a final decision had been rendered, while others went so far as to allow persons awaiting trial to bring their cases before them once the judicial inquiry had been opened. If the Armenian Constitutional Court could in fact be seized at an early stage, the decisions of the plenary Supreme Court discussed in paragraph 59 of the report notwithstanding, had it ever ruled for example on the treatment of detained persons or the length of the detention?

44. It would also be useful to know whether the Constitution stipulated that no person could be obliged to testify against himself. If such was indeed the case, the interpretation of article 56 of the Code of Penal Procedure contained in paragraph 58 of the report was too broad. Further clarifications concerning article 56 would be useful, especially as to whether that provision was widely applicable, in particular in cases where confessions may have been extracted by torture.

45. Mr. YAKOVLEV commended Armenia for its efforts to bolster respect for human rights, and in particular those embodied in the Convention against Torture. Paragraph 17 of the report indicated that the Public Prosecutor of the Republic was empowered to sign extradition agreements with the prosecutors of other States. Was it possible to appeal against those decisions? What safeguard existed to ensure that those extradition agreements were not in violation of the provisions of the Convention?

46. With regard to article 6 of the Convention, paragraph 27 of the report indicated that significant revisions to the Code of Penal Procedure were in preparation, and that plans were under way to combine the investigatory services of the Department of Public Prosecutions, the Ministry of Internal Affairs and the Department of State for National Security into a single government committee. It was also envisaged that examining judges would no longer form part of the judiciary but would act as members of the body competent to conduct preliminary investigations: clarifications would be welcome on both the functions of such investigators and on the new provisions as a whole. The delegation might describe what obstacles, if any, it had encountered in carrying out its far-reaching reform, cited in paragraph 30 of the report, of the investigation procedure and of the subsequent stages of the penal procedure.

47. Mr. PIKIS inquired whether a procedure existed whereby a detained person or a third party could either confirm or challenge the lawfulness of detention. It would also be useful to know whether, in cases where it was established that a person had been tortured, his detention became illegal. Was the right of an accused person not to testify against himself explicitly recognized and, if so, at what stage in the process was he advised of that right?

48. In the context of Armenia's reform of its penal procedure, it seemed that a strict division of powers between the public prosecutor and the courts had been established; clarifications would be welcome. Did there exist a procedure by which the authorities automatically launched an investigation when international organizations made allegations of torture and, if so, what was the usual outcome of such allegations?

49. The CHAIRMAN associated himself with the questions voiced by other members of the Committee. He thanked the Armenian delegation for its attention, and invited it to reply to the questions raised at the 246th meeting.

50. The Armenian delegation withdrew.

The meeting was suspended at 12.30 p.m. and resumed at 12.40 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6)

51. Mr. BRUNI (Secretary of the Committee) drew the attention of members to the notes to agenda item 6 (CAT/C/35). Information on the submission of reports was also provided in documents CAT/C/5, 7, 9, 12, 16/Rev.1, 24, 28/Rev.1 and 32/Rev.2, which contained lists of those States parties due to have submitted their initial report between 1988 and 1995. The lists of States parties due to have submitted their second periodic report between 1992 and 1995 appeared in documents CAT/C/17, 20/Rev.1, 25, 29 and 33. The list of States due to submit their third periodic report in 1996 appeared in document CAT/C/34.

52. Of the initial reports due between 1988 and 1996, 61 had been submitted and 28, or just less than a third, had not been received; 12 of the States

parties in question were already more than three years late: Uganda and Togo, whose reports had been due in 1988; Guyana, in 1989; Brazil and Guinea, in 1990; Somalia, in 1991; Estonia, Venezuela, Yemen and Yugoslavia, in 1992; and Benin and Bosnia and Herzegovina, at the end of April 1993. Those States had already received between 3 and 12 reminders, depending on the length of the delay. Moreover, at its eleventh session the Committee had requested Benin to submit a new version of its initial report, which had been considered too brief. Despite two reminders from the secretariat and a letter from the Chairman to the Ministry for Foreign Affairs, the report had not been received.

53. With regard to second periodic reports, 54 had been requested during the period from June 1992 to April 1996; 27 had been submitted and 27 were overdue. Of those, 10 had been overdue for more than three years namely, those of Afghanistan, Austria, Belize, Bulgaria, Cameroon, France, Luxembourg, Uganda, the Philippines and Togo. Five reminders had already been sent to States which should have submitted their reports in 1992. The United Kingdom had forwarded to the secretariat additional information regarding questions raised by the Committee during the consideration of its second periodic report at the previous session. By contrast, the additional information requested from Mexico, which should have been received in May 1994, and from Nepal, which should have been received in April 1995, had not arrived. Other States that had not sent the additional information requested of them were Canada, Cyprus, Paraguay and Poland.

54. It should be noted that a Chilean non-governmental organization, the Committee for the Defense of People's Rights, had sent a very detailed report concerning Chile's follow-up to the recommendations formulated by the Committee following its consideration of that country's second periodic report in November 1994. Although that report had not been transmitted to the country rapporteurs, Mr. Gil Lavedra and Mr. Lorenzo, who were no longer members of the Committee, it could be consulted in the secretariat's files. Lastly, the secretariat had received a note from the Peruvian Government regarding the appointment of a people's ombudsman on 3 April 1996. That note could be consulted in the files of the secretariat.

The meeting rose at 12.55 p.m.